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ATTORNEYS FOR DEFENDANT
INTERNATIONAL BUSINESS MACHINES CORPORATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID A. KAVITZ,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

Defendant.

Case No. 09-CV-05710-CM

**AFFIDAVIT OF PETER C.
MOSKOWITZ IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER C. MOSKOWITZ being duly sworn, deposes and says:

1. I am a member of the law firm of Jackson Lewis LLP, attorneys for Defendant International Business Machines Corporation ("IBM" or "Defendant") in the above-referenced matter, and submit this affidavit in support of Defendant's Motion for Summary Judgment.

2. Defendant is a New York corporation and is headquartered in Armonk, New York.

3. A true and correct copy of Plaintiff's Incentive Plan letter, dated January 30, 2006, is attached as Exhibit "A."

4. A true and correct copy of an e-mail from Andre Temidis to Plaintiff, dated January 20, 2006 at 1:35 PM, is attached as Exhibit "B."

5. A true and correct copy of an e-mail from Plaintiff to Andre Temidis, dated January 30, 2007 at 6:05 PM, is attached as Exhibit "C."

6. A true and correct copy of Defendant's Worldwide Standard Incentive Letter Disclaimers for 2006, dated November 28, 2005, is attached as Exhibit "D."

7. A true and correct copy of a summary of Plaintiff's annual compensation at IBM, dated September 15, 2009, is attached as Exhibit "E."

8. A true and correct copy of an e-mail from Andre Temidis to Jeri Savoy, courtesy copying Plaintiff, dated April 26, 2006 at 9:24 AM, is attached as Exhibit "F."

9. A true and correct copy of an e-mail from Michael Terrell to Jeri Savoy, courtesy copying Andre Temidis, Dennis Allen, and David Kavitz, dated July 7, 2006 at 1:09 P.M., is attached as Exhibit "G."

10. A true and correct copy of an e-mail from Jeri Savoy to Michael Scheuermann and David Wagner, courtesy copying Plaintiff, Michael Terrell, Dennis Allen, and Andre Temidis, dated August 7, 2006 at 2:10 PM, is attached as Exhibit "H."

11. A true and correct copy of an e-mail from Jeri Savoy to David Wagner, courtesy copying Plaintiff, Michael Terrell, Dennis Allen, and Andre Temidis, dated August 14, 2006 at 2:54 PM, is attached as Exhibit "I."

12. A true and correct copy of an e-mail from Andre Temidis to Plaintiff, Dennis Allen, Jeri Savoy, and Michael Terrell, courtesy copying Mike Press, dated August 22, 2006 at 3:05 PM, is attached as Exhibit "J."

13. A true and correct copy of an e-mail with attachments from Jeri Savoy to Michael Scheuermann, courtesy copying Plaintiff and Andre Temidis, dated August 23, 2006 at 1:10 PM, is attached as Exhibit "K."

14. A true and correct copy of an e-mail from Plaintiff to David Wagner and Michael Scheuermann, courtesy copying Andre Temidis and Plaintiff, dated September 7, 2006 at 9:03 A.M., is attached as Exhibit "L."

15. A true and correct copy of an e-mail from Plaintiff to David Wagner, courtesy copying Frank Motola, Kenneth Clark, Andre Temidis, and George Shanine, dated September 25, 2006 at 5:23 PM, is attached as Exhibit "M."

16. A true and correct copy of an e-mail from Andre Temidis to Plaintiff, Jeri Savoy, Dennis Allen, Michael Terrell, courtesy copying George Shanine, dated October 2, 2006 at 1:53 PM, is attached as Exhibit "N."

17. A true and correct copy of an e-mail from Plaintiff to Ken Clark, courtesy copying Mark Ennis, George Shanine, Andre Temidis, Michael Terrell, and Dennis Allen, dated September 27, 2006 at 11:38 AM, forwarding a string of e-mails concerning the audit, is attached as Exhibit "O."

18. A true and correct copy of an e-mail from Andre Temidis to Jeri Savoy and Plaintiff, dated October 16, 2006 at 2:03 PM, is attached as Exhibit "P."

19. A true and correct copy of an e-mail with attachment from Mark Ennis to Andre Temidis, dated October 30, 2006 at 1:42 PM, is attached as Exhibit "Q."

20. A true and correct copy of an e-mail from Andre Temidis to Dennis Allen, courtesy copying Plaintiff, dated November 8, 2006 at 8:59 AM, is attached as Exhibit "R."

21. A true and correct copy of an e-mail from Lauren E Smith to Andre Temidis, courtesy copying Bill Sullivan, Cathy Maurer, and Bill Moorman, dated December 13, 2006 at 3:27 PM, is attached as Exhibit "S."

22. A true and correct copy of an e-mail from Rick Martinotti to Mark Coyle, Bob Guidotti, and Jane Phillips, dated December 18, 2006 at 9:37 AM, is attached as Exhibit "T."

23. A true and correct copy of an e-mail from Mark Coyle to Rick Martinotti, courtesy copying Bill Sullivan, Debbie Gianella, and Lauren E. Smith, dated December 18, 2006 at 9:24 AM, and a true and correct copy of an e-mail from Rick Martinotti to Bill Sullivan and Lauren E. Smith, courtesy copying Mark Coyle and Debbie Gianella, dated December 18, 2006 at 10:00 AM, are attached as Exhibit "U."

24. A true and correct copy of an e-mail from Hugh Flannery to Denyse M. Cromwell-Mackey and Bill Sullivan, courtesy copying Steve Lautz and Andre Temidis, dated December 18, 2006 at 4:21 PM, is attached as Exhibit "V."

25. A true and correct copy of an e-mail from Hugh Flannery to Bill Sullivan, courtesy copying Denyse M. Cromwell-Mackey and Cathy Maurer, dated December 18, 2006 at 4:30 PM, is attached as Exhibit "W."

26. A true and correct copy of an e-mail from Steve Lautz to Joanna Dushko, Mike Schade, and Rick Martinotti, courtesy copying Mark Coyle, Bob Guidotti, and Hugh Flannery, dated December 18, 2006 at 4:13 PM, is attached as Exhibit "X."

27. A true and correct copy of an e-mail from Bill Sullivan to Cathy Maurer, courtesy copying Hugh Flannery, Denyse M. Cromwell-Mackey, Lauren E. Smith, Rick

Martinotti, and Debbie Gianella, dated December 18, 2006 at 3:25 PM, is attached as Exhibit “Y.”

28. A true and correct copy of an e-mail from Rick Martinotti to Bill Sullivan, dated December 19, 2006 at 9:16 AM, is attached as Exhibit “Z.”

29. A true and correct copy of Plaintiff’s Commission Statement is attached as Exhibit “AA.”

30. A true and correct copy of an e-mail from Andre Temidis to Cathy Maurer, dated February 6, 2007 at 3:12 PM, forwarding a string of e-mails concerning Plaintiff’s commission, is attached as Exhibit “BB.”

31. A true and correct copy of an e-mail from Carolyn Austin to Alicia King, dated February 28, 2007 at 4:09 PM, is attached as Exhibit “CC.”

32. A true and correct copy of Amendment #13 and Amendment #12 to the Premier Value-Added Industrial Manufacturer Agreement between Informix Software, Inc. and Motorola, Inc., reflecting the 2003 license audit, is attached as Exhibit “DD.”

33. True and correct copies of cited pages from Plaintiff’s deposition, dated December 14, 2009, are attached as Exhibit “EE.”

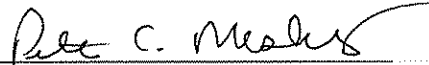
34. True and correct copies of cited pages from Hugh Flannery’s deposition, dated December 16, 2009, are attached as Exhibit “FF.”

35. True and correct copies of cited pages from Andre Temidis’ deposition, dated December 15, 2009, are attached as Exhibit “GG.”

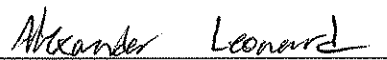
36. True and correct copies of cited pages from Rick Martinotti’s deposition, dated January 8, 2010, are attached as Exhibit “HH.”

37. True and correct copies of cited pages from George Shanine's deposition, dated January 8, 2010, are attached as Exhibit "II."

38. Copies of decisions unavailable on WESTLAW cited in Defendant's Memorandum of Law in Support of Its Motion For Summary Judgment are attached as Exhibit "JJ."


PETER C. MOSKOWITZ

Sworn to before me
this 25th day of February, 2010


Notary Public

